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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,027	11/26/2003	Franklin C. Wong	AND541/4-010US/64000	7270
21586	7590	12/29/2005	EXAMINER	
VINSON & ELKINS, L.L.P. 1001 FANNIN STREET 2300 FIRST CITY TOWER HOUSTON, TX 77002-6760			JONES, DAMERON LEVEST	
			ART UNIT	PAPER NUMBER
			1618	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/724,027

Applicant(s)

WONG, FRANKLIN C.

Examiner

D. L. Jones

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/21/05; 11/15/04; & 9/26/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 and 45-51 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,9,13,16,17 and 45-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-8,10-12,14,15 and 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/15/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Inventorship notice</u> .              |

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## **ACKNOWLEDGMENTS**

1. The Examiner acknowledges receipt of the amendment filed 11/21/05 wherein the specification was amended and claims 24-44 and 52 were canceled.

**Note:** Claims 1-23 and 45-51 are pending.

## **APPLICANT'S INVENTION**

2. Applicant's invention is directed to radiopharmaceuticals as set forth in independent claims 1, 45, and 48.

## **RESPONSE TO APPLICANT'S ELECTION**

3. The restriction into groups based on 35 USC 121 is WITHDRAWN. However, the election of a single species is maintained. Thus, Applicant's election of the species wherein the composition comprises yttrium-90, glass, particulates, and a cation is acknowledge in the response filed 9/26/05. The search was not expanded beyond Applicant's elected species because prior art was found which could be used to reject Applicant's claims.

## **WITHDRAWN CLAIMS**

4. Claims 3, 5, 9, 13, 16, 17, and 45-51 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention/species.

## **103 REJECTIONS**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4, 6-8, 10-12, 14, 15, and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brodack et al (US Patent No. 5,560,901).

Brodack et al disclose radionuclide labeled particles useful for radiation synovectomy (see entire document, especially, abstract). The radiation agent comprises a substantially insoluble particle which is of suitable size and does not leak substantially from the target area after administration. The size of the particle may be from approximately 0.5 to 40 microns. The particles are preferably biodegradable, but may also be degradable by other mechanisms. Also, the particles are not prone to aggregation under the condition used to prepare/store the radiation synovectomy agent (column 3, lines 3-10). The particles may be made from glass (beads), microspheres, or calcium components (column 3, lines 13-48; column 5, lines 40-63). The radioisotopes that may be used are those that emit beta particles. A preferred beta particle emitter is  $^{90}\text{Y}$  (column 4, lines 37, and 47). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to generate a radiopharmaceutical composition having particles comprising a metal and one or more radioactive isotopes because Brodack et al discloses radionuclide labeled particles that meet the limitations of the instant invention as disclosed above. Thus, one would be motivated to select the various components and specific elements of Applicant's elected species because the species components are each disclosed in the listings of Brodack et al.

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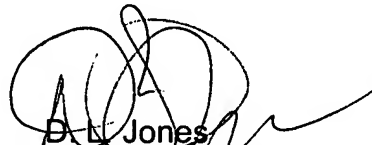
**COMMENTS/NOTES**

7. Applicant is respectfully requested to supply the year of publication of references C33 and C4 listed on the information disclosure statement filed 11/15/04 in the next correspondence to the Examiner.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
D. L. Jones  
Primary Examiner  
Art Unit 1618

December 23, 2005

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

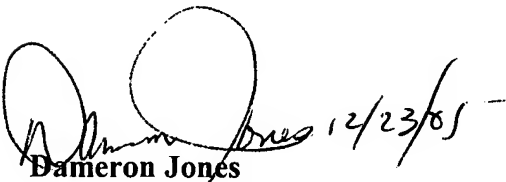
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Ms. Margaret J. Sampson  
VINSON & ELKINS L.L.P  
2300 First City Tower  
1001 Fannin Street  
Houston, Texas 77002-6760

Date: December 23, 2005  
Application No. 10/724,027  
Filing Date: November 26, 2003  
Subject: Radiopharmaceuticals and radioactive  
microspheres for locoregional ablation  
of abnormal tissues

Receipt is acknowledged of the petitions filed September 26, 2005, under 37 CFR 1.48(b) for correction of inventorship. The petition has been **GRANTED**.

In view of the papers filed, it has been found that the inventor, Shuang Wang should be deleted. Accordingly, this application has been changed by deleting Shuang Wang. The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.



Dameron Jones

United States Patent and Trademark Office  
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Art Unit 1618  
Remsen 4A51  
571-272-0617